IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO 464 OF 1991

WITH

CRIMINAL APPEAL NO 721 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANTIBHAI MANGUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 464 of 1991
   MR MJ BUDDHABHATTI Ld. Adv. for the Appellants Nos. 2-3
   MR DIGANT P JOSHI Ld. APP for Respondent No. 1
2. Criminal Appeal No. 721 of 1991
   MR DIGANT P. JOSHI Ld. APP for the appellant.
   MR MJ BUDDHABHATTI Ld. Adv. for Respondent No. 1-3.

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/08/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. On a trial held by the learned Additional Sessions Judge, Court No. 4, Ahmedabad in Sessions Case No. 97/89, the appellants in Criminal Appeal No. 464/91 have been convicted under Sections 376(2)(a)(g), 354, 341, 342, 323 read with Section 34 of the Indian Penal Code and punished with RI for 10 years and fine of Rs. 500/-, in default, RI for 6 months for the offences punishable under Section 376(2)(a)(g) read with Section 34 of the I.P.C., RI for 6 months for the offence punishable under Section 354 read with Section 34 of the IPC, SI for 15 days for the offence punishable under Section 341 read with Section 34 of the IPC, RI for 3 months for the offence punishable under Section 342 read with Section 34 of the IPC and RI for 3 months for the offence punishable under Section 323 read with Section 34 of the IPC. whereas, the respondents in Criminal Appeal No. 721/1991 have been acquitted of the charges framed against them vide judgement dated June, 22 1991. As both the appeals arise out of common judgement and as common question of facts and law arise for our determination in these two appeals, we propose to dispose of them by this common judgement.

2. One of the villages of Sagbara Taluka, District Bharuch is Devidav. This village is predominantly inhabited by Adivasis. The village is situated at a distance of about three to four kilometers from Sagbara. The road leading to this village ends at Gorda village. From there, one has to walk or go by a vehicle through uneven route about a distance of four kilometers to reach this village.

3. Smt. Guntaben, then aged 22 was the second wife of Hanabhai Ramji and was staying with her husband in village Devidav. In the month of January, 1986 Bai Sakra, who is related to husband of Smt. Guntaben alongwith Bai Indira and Indira's mother had come from village Taval to the house of Bhimji Geria of village Devidav. One Kanabhai Roopji who is son of uncle of Hanabhai had invited these people for dinner at his house, which is adjacent to the house of Hanabhai Ramji. They had stayed in the house of Kanabhai during the night

and in the morning, they were invited for tea by Smt. Guntaben to her house. Hanabhai Ramjibhai was not present in his house as he had gone to village Pati for carpentry work of a house of his relative. After taking tea, Smt Guntaben, Bai Sakra and Bai Indira had gone to the field of Hanabhai situated nearby, for plucking Tuver. While they were plucking Tuver, Kanabhai alongwith his friend Jaysing Karsu came there and dragged Bai Sakra by catching hold of her hand. Both Smt. Guntaben and Bai Indira intervened and tried to rescue Bai Sakra but they were slapped as well as threatened by these two persons and therefore, they could not rescue Bai Sakra. On return to home, Smt. Guntaben reported this incident to Roopji Nokta, father of Kana Roopji and asked him that her husband i.e. Hanabhai Ramji, who was at village Pati should be informed about the incident. On being informed, Hanabhai Ramji alongwith elder brother of Bai Sakra returned to his village in the evening. Enroute, Hanabhai informed the father of Bai Sakra i.e. Shri Ubadia Kalia at village Taval about the incident of kidnapping. On the next day, Hanabhai also searched the neighbouring villages to ascertain the whereabouts of the kidnapped girl, in the company of police Patel Karamsinh Gimba, but search proved to be futile.

4. Upon being informed about the kidnapping of his daughter by Kana Roopji of village Devidav, the father of the girl immediately took steps to search for the girl by contacting his relatives and also by sending people to Devidav village. The record of the case shows that he waited for some time but as his waiting proved of no use, he decided to report the matter to the police. In the afternoon, he alongwith Gulabsing Ubadia Vasava, who was then, Talati-Cum-Mantri of village Taval went to the Sagbara police station and narrated the incident to the Jamadar in charge of the police station. The Jamadar in-charge of the police station did not record the complaint or register the information given by father of Bai Sakra but arranged for despatch of police party to village Devidav. Gulabsing Ubadia Vasava arranged for a truck, in which, police party proceeded towards village Devidav in search of the kidnapped girl. In that truck 5 police men i.e. (1) unarmed Head Constable Kantibhai Mangubhai (the appellant No. 1 in Criminal Appeal No. 464/94) (2) Unarmed Police Constable Amarsing Fatehsing (the appellant No. 2 in Criminal Appeal No. 461/1991) (3) Unarmed Police Constable Keshavbhai Maganbhai (the respondent no. 2 in Criminal Appeal No. 721/91) (4) Unarmed Police Constable Laxmanbhai Amrabhai (the appellant No. 3 in Criminal Appeal No. 461/91) (5) Armed Police Constable Govind Soma (the respondent no. 3

in Criminal Appeal No. 721/91), Gulabsing Ubadia Vasava, Chhaganbhai Jariya, Chhanabhai Ubadia, Jaysingbhai Ramji, Jethabhai Debabhai and others proceeded towards village Devidav. After reaching village Gorda, the truck halted there as it could not proceed further due to bad and uneven road. The search party proceeded towards village Devidav walking and reached at the house of Police Patel Mr. Karamsinh after midnight, but the search party was informed by wife of the Police Patel that the police patel had gone out and therefore, the search party went to the house of Kana Roopji. Kana Roopji, who had allegedly kidnapped Bai Sakra was also not available at his house but his brother in law Bhimsing Kathuria who had come from village Bhador and sleeping in the house was woken up and whisked away for interrogation. The search party next went to the house of Smt. Guntaben situated nearby. Hanabhai Ramji's first wife Pohliben and his mother were found sleeping alongwith four children in the house, whereas, Smt. Guntaben and her husband Hanabhai Ramji were sleeping in the orchard. The police party went to the place where Smt. Guntaben and her husband were sleeping and apprehended both of them. Gulabsing identified Smt. Guntaben as the main culprit behind the kidnapping incident of Bai Sakra. Smt. Guntaben as well as her husband were manhandled and beaten up by the police men in uniform. The police party thereafter took Smt. Guntaben, her husband Hanabhai Ramji and Bhimsing Kathuria to the house of Police Patel of village Devidav. Hanabhai and Bhimsing were tied with ropes and they were also belaboured. As it was a chilly night, the policemen asked one Kiliyabhai to light the fire. After the fire was lit, Gulabsing uttered that this lady had insulted the girl of our village and therefore, we should outrage her modesty. On hearing these words, the policemen asked Bai Gunta to take off her clothes. When she refused to do so, one policeman caught hold of her hand, whereas, other started taking off her clothes and she was stripped naked. Smt. Guntaben was made to stand in naked condition for half an hour just near the fire and she could see the five policemen who had come to her house with Gulabsing and others.

5. Thereafter, she was asked to put on her clothes and after she had put on clothes, she was tied with a rope, which was brought from the house of police patel. Bai Gunta, her husband Hana Ramji and Bhimji Kathuria were thereafter taken to village Gorda. The motor truck in which the search party alongwith Gulabsing and others had come was found waiting at to village Gorda and

therefore, the husband of Bai Gunta i.e. Hana Ramji, Bhimji Kathuria, Gulabsing and other persons were asked to sit in the body of the truck with the armed policeman, who was carrying a gun, whereas, Bai Gunta was asked to sit in the cabin of the truck in between the other four unarmed policemen. In the truck she was untied and the driver was directed to drive the truck towards Sagbara. On way to Sagbara, the four policemen, who were sitting in the cabin asked the driver to stop the truck at village Devmogra. After the truck was stopped by the driver, the driver was asked to get down by the policemen. The policemen thereafter, asked Bai Gunta to remove her clothes and when she refused to do so, one policeman caught hold of her hand and other caught hold of her legs, whereas, the third removed her clothes. After removing all her clothes, she was made to lie on the seat of the truck. After she was made to lie down, one policeman caught hold of her hands, whereas, the other gagged her mouth and in that position, all the policemen one after the other committed rape on her. The truck had stopped at village Devmogra for about half an hour. After committing rape, the policemen asked Bai Gunta to put on her clothes and the driver was called. The driver was thereafter instructed to take the truck to Sagbara and the truck reached Sagbara in the early morning of January 6, 1986.

6. After reaching Sagbara, four policemen, who were sitting with Bai Gunta in the cabin of the truck took her to the first floor of the building adjacent to the Sagbara police station and at that place, again they asked Bai Gunta to remove her clothes. On refusal to remove her clothes, Bai Gunta's hands were caught hold by one policeman and the other removed her cloths. After removal of the clothes, she was made to lie down in the varanda of the first floor and all the four policemen again committed rape on her one by one. Thereafter, one policeman gave a thrust with Lathi on private part of Bai Gunta and because of this, profuse bleeding from the vagina of Bai Gunta took place. Thereafter, Bai Gunta put on her clothes and the policemen brought her down and took her in one room of Sagbara Police Station. In the morning at about 7 A.M., she had come out of the police station to wash her mouth and at that time, she noticed that her husband and Bhimsing Kathuria were also placed in the lock up of the police station. At about 8 A.M. P.S.I. Mr. Joshi came at the police station and made inquiries about the missing Bai Sakra. While making inquires, Mr. Joshi gave 2-3 slaps to Bai Gunta. At about, 9 AM Bai Sakra, who was missing and Kana Roopji who had allegedly kidnapped Bai Sakra came to the police

station. The policemen of Sagbara Police Station severely beat Kana Roopji and put him behind the bars. Thereafter, Jaising Karshu also came to the police station and he was also severely beaten and placed behind the bars by the policemen. All these persons were detained at the police station upto about 4 p.m. on 7.1.1986 and were allowed to go only thereafter.

7. After they were released from the police custody, Jehria Bharia met Bai Gunta as well as her husband and told them that he had paid Rs. 2000/- to PSI Mr. Joshi for releasing them from the police custody. After release from police custody, Bai Guntaben told her husband about the rape committed on her by the policemen of Sagbara policemen. From Sagbara she in the company of her husband went to village Dudhaliver. On the next day they went to village Gundvad at the residence of one Pratap. At village Gundvad, Roopsing Dhana met them and Bai Gunta as well as her husband told him about the rape committed by the policemen Sagbara Police Station on Bai Gunta. Roopsing Dhana advised Bai Gunta and her husband to go to Rajpipla Hospital for medical examination and accordingly went to Rajpipla Hospital but the doctor on duty refused to examine Bai Gunta as she had not come to the hospital with a police yadi. Thereafter, Bai Gunta and her husband went to the office of Free Legal Aid at Rajpipla, where, they met father Joseph. Bai Gunta narrated the incident of rape on her in detail to father Joseph. In the office of Legal Aid one advocate was present and he after hearing the version of Bai Gunta asked her to come on the next day and submit an application, which was to be prepared by him, in the office of the D.S.P. Bharuch. As there was profuse bleeding from the private part of Bai Gunta and as she was suffering from severe bodily pain, she was taken by father Joseph in his jeep to Mangrole hospital. At the said hospital Bai Gunta was examined and treated by Dr. Daxaben Patel, to whom she narrated in detail the incident of rape on her by policemen of Sagbara Police Station. After taking treatment from Dr. Daxaben Patel, Bai Gunta returned to Rajpipla in the jeep of father Joseph.

8. On the next day morning they went to the office of Free Legal Aid, where one advocate was present, who took them to his office and thumb impression of Bai Gunta was taken on an application prepared by him. Bai Gunta, her husband and Roopsing Dhana thereafter, went in the jeep of father Joseph to the office of the District Superintendent of Police of Bharuch. The officer, who was present in the office of DSP read the application

presented by Bai Gunta and told her that an officer from Rajpipla would come to make inquiry. The said officer also advised Bai Gunta to go to Government Hospital either at Rajpipla or Dediapada or Sagbara for treatment. On the next day, Bai Gunta with her husband and others went to the Government Hospital of Rajpipla but the doctor on duty refused to treat Bai Gunta as she had not brought any police yadi with her. Therefore, they returned to the office of father Joseph and stayed there over night.

9. On the next day, one advocate from Delhi and another from Ahmedabad came to the office of father Joseph and both the advocates took Bai Gunta to Rajpipla Government Hospital, where she was provided medical aid. Thereafter, the advocates took her to Government Rest House, where, Government officers of Rajpipla who were present there, collected the details about the incident in question from Bai Gunta and she was taken to the Rajpipla Police station. At Rajpipla police station, her complaint was recorded by the Circle Police Inspector Mr. B.J. Parmar and First Information Report was registered under Section 154 of the Criminal Procedure Code as CR. No.0/86 of Rajpipla Police station. At about 1.30 to 2 a.m. on the same night, Bai Gunta and her husband were taken in a jeep by Circle Police Inspector Mr. Parmar to Sagbara and one lady constable had accompanied them. Bai Gunta and her husband reached Sagbara police station at about 4 a.m. As an offence of rape had taken place within the jurisdiction of Sagbara police station, investigation of the case was transferred to the Sagbara police station, where, it was registered as CR. No. 2/86. When they reached Sagbara police station, PSI Mr. Joshi was present and he threatened Bai Gunta that on disclosure of incident of rape on her by the policemen of Sagbara Police Station, she would be beaten and handed over again to the policemen. During that time principal of Sagbara High School Mr. Narottam Singabhai, who happened to be the cousin of Bai Gunta came to the police station and he also advised Bai Gunta not to speak about the incident of rape on her committed by the policemen.

10. At about 11.30 a.m. Bai Gunta and her husband were taken in one jeep car to the office of Mamlatdar, Sagbara. They were accompanied by one lady constable and other policemen, who were in plain cloths, whereas, PSI Mr. Joshi and Jamadar Bhaskar were following them on a motor cycle. After reaching the office of Mamlatdar, Bai Gunta and her husband were asked to purchase two stamp papers, each of Rs. 10/-. On amount being given, Jamadar Bhaskar had purchased two stamp papers and thumb

impression of Bai Gunta was taken in the sale register of stamp papers.

11. After purchasing stamp papers they were taken in jeep to the High School, followed by Jamadar Bhaskar and PSI Joshi on the motor-cycle. When jeep reached near High School, they were made to sit in the jeep, whereas, Jamadar Bhaskar and PSI Joshi went inside the building of the high school. After about an hour they were called in one room of the high school where PSI Joshi caught hold of hand of Bai Guntaben and took her thumb impression on the stamp paper. When her thumb impression was taken, she found that there was writing on the stamp paper but the said writing was neither explained nor read over to her. Similarly, thumb impression of her husband was also taken on another stamp paper. After taking their thumb impressions, they were again taken to Mamlatdar's office in the jeep followed by Mr. Joshi and Jamadar Bhaskar on a motor-cycle. After reaching Office of Mamlatdar, PSI Joshi again took thumb impression of Bai Gunta on the stamp paper and thereafter, they were taken to Sagbara police station, where, Dy.S.P. Bharuch was also present. Bai Gunta and her husband remained in the police station for the whole day and night.

12. On the next day one police officer of Rajpipla took them in a jeep car, to one lodge for meals. After taking meals, Bai Gunta and her husband got down near village Kanbi Pitha and thereafter, they reached village Gundvad. The District Collector as well as Mamlatdar had come to village Gundvad and recorded the statements of Bai Gunta and her husband. Bai Gunta, her husband and Roopsing Dhana thereafter went to the office of Free Legal Aid at Rajpipla where, father Joseph and two advocates were present. On inquiry being made, the advocates came to know that Bai Gunta and her husband were forced by the policemen of Sagbara police station to swear false affidavits. The advocates assured them that their case would be represented properly before the highest court of the land. Afterwards, Bai Gunta and her husband returned to village Devidav. Thereafter, PSI Joshi of Sagbara police station went to call Bai Gunta for test identification parade, which was to be held at the office of Mamlatdar on January 19, 1986. Test identification parade was held by the Executive Magistrate and in the said parade Bai Gunta identified the accused nos. 1 to 4 as policemen who had committed gang rape on her in the cabin of the truck as also at the varanda of a building adjacent to Sagbara police station.

13. A writ petition (criminal) No. 92/86 was filed

by advocate Mr. P. Rathinam before the Supreme Court of India complaining about the rape committed by the four policemen of the Sagbara police station on Bai Gunta. The Supreme Court by order dated January 22, 1986 directed that the investigation into the offence of rape alleged to have been committed by four policemen of Sagbara police station on Bai Guntaben, be immediately taken over by the Central Bureau of Investigation (for short "CBI") and the local police was restrained by the Supreme Court from proceeding with the investigation into the case. In view of these directions, the investigation was taken over by Sp. Branch of CBI, Ahmedabad.

14. Mr. G.I. Doabia, the then Dy. Superintendent of Police, CBI, Ahmedabad as per the direction of the Supreme Court took over the charge of the investigation of CR. No. 2/86 of Sagbara Police Station from CPI Rajpipla Mr. Parmar. Mr. Doabia lodged the First Information Report and registered the offence on March, 1 1986 with CBI Ahmedabad at CR. No. 5/86. Further investigation into the offence of rape was carried out by CBI Ahmedabad.

15. The Investigating Officer of CBI recorded the statements of Bai Gunta, her husband and others. The statement of Dr. Daxaben Patel was also recorded. The medical certificate issued by Dr. Daxaben Patel was obtained by the Investigating Officer from advocate Mr. Rathinam during the course of investigation.

16. On March 20, 1986 Bai Gunta took the I.O. to the first floor of building situated adjacent to the Sagbara police station, where, the policemen had committed rape on her. The I.O. was also accompanied by the experts from Forensic Science Laboratory. A detailed panchnama of the place of occurrence was drawn. By the time, the truck in which, rape was committed by the policemen on Bai Gunta was also available and therefore, panchnama of the truck bearing registration No. GTG 3512 was also drawn. During the course of investigation, the cloths of the accused as well as their movement diaries, which were in the form of notebooks were seized. The cloths put on by Bai Gunta on the date of incident were produced by her and the same were also taken into custody. The cloths of the accused and Bai Gunta were sent to FSL for analysis. During the course of investigation, station diary of Sagbara police station, lock-up register of the police station, complaint register etc. were also attached. Mr. Doabia was thereafter transferred from CBI to the State Police and therefore, the investigation of the case was taken over by Mr. S.D. Pandya on July 18, 1986.

17. After receipt of the report from FSL and on the conclusion of the investigation, Mr. S.D. Pandya, the then, Dy. Superintendent of Police, Ahmedabad filed chargesheet against the accused in the Court of learned Additional Chief Judicial Magistrate (Rural) at Narol on August 21, 1987 for the offences punishable under Section 376 (2)(a)(g), 354, 341, 342, 323 read with Section 34 of the Indian Penal Code. As the offence punishable under Section 376 of the I.P.C. is exclusively triable by a Court of Sessions, the learned Chief Judicial Magistrate, Narol vide his order dated May 21, 1988 committed the case to the Sessions Court at Bharuch for trial, where, it was numbered as Sessions Case No. 55/88.

18. Thereafter, Bai Gunta filed Misc. Criminal Application No. 2694/88 before the High Court and prayed that the Sessions Case No. 55/88 pending before the court of Sessions Court at Bharuch be transferred to the Ahmedabad City Sessions Court for the reasons stated in the said application. The High Court (Coram : R.A.Mehta,J.as he then was) vide order dated March 2, 1989 directed that the Sessions Case No. 55/88 pending in Sessions Court at Bharuch be transferred to the Sessions Court at Ahmedabad, before which, Special Case No. 7/89 was also pending regarding bribe and corruption by policemen of Sagbara police station. Accordingly, the case was transferred to the Sessions Court at Ahmedabad, where, it was numbered as Sessions Case No. 97/89.

19. The charge at Ex. 28 was framed by the learned Additional City Sessions Judge for the offences punishable under Sections 376(2)(a)(g), 354, 341, 342, 323 read with Section 34 of the I.P.C. The charge was read over and explained to the accused, who pleaded not guilty to the same and claimed to be tried.

20. The prosecution therefore, examined (1) Bai Guntaben, wife of Hanabhai Ramji as PW-1 at Ex. 67 (2) Vasantbhai G. Vasava as PW-2 Ex. 71 (3) Ramsing Dahyabhai Gohil as PW-3 Ex. 72 (4) Hanabhai Ramjibhai Vasava as PW-4 Ex. 74 (5) Ishwarbhai Mohanbhai as PW-5 Ex. 76 (6) Bhimsing Kathuria as PW-6 Ex. 78 (7) Mohanbhai Devabhai Patel as PW-7 Ex. 79 (8) Karamsing M. Vasava as PW-8 Ex. 90 (9) Madhavbhai Mithabhai Parmar Dy. Mamlatdar, who had held the identification parade as PW-9 Ex. 93. (10) Dr. Daxaben Anilbhai Patel as PW-10 Ex. 96 (11) Komalcharan Siyaram Agrawal as PW-11 Ex. 101 (12) Vipul Bakulbhai Pandit as PW-12 Ex. 103 (13) Shashikant Dilipkant Pandya as PW-13 Ex.108 (14) Kishorbhai Mohanbhai Desai as PW-14 ex. 109 and (15)

Gurmitsing Indarsing Doeria as PW-15 Ex.116, to prove its case against the accused. The prosecution also produced documentary evidence such as medical certificate regarding injuries sustained by Bai Gunta issued by Dr. Daxaben Patel, notebooks of the accused indicating their presence at village Devidav, different seizure memos, FIR lodged by Bai Gunta, panchnama of Varanda as well as truck, where rape was committed on Bai Gunta, panachnama of identification parade, report of the FSL etc. in support of its case against the accused. Two witnesses namely Bhimsing Jehsing Parmar and Jagatsing Vajesing Puvar were examined as Court witnesses at Exs. 129 and 130 respectively. After recording of evidence of prosecution witnesses, was over, the learned Judge explained the circumstances appearing against the accused in the evidence led by the prosecution to them and recorded their further statements as required by Section 313 of the Code of Criminal Procedure. In their further statements, the accused denied the case of the prosecution and expressed their desire to examine Dr. Nareshchandra Gopalraj Saikhede as defence witness in support of their defence. Accordingly, Dr. Nareshchandra G. Saikhede was examined as defence witness no. 1 at Ex. 138.

21. On appreciation of evidence adduced by the prosecution and after hearing the learned counsel for the parties, the learned Additional City Sessions Judge held that the accused Nos. 2,3 and 4 in furtherance of their common intention had voluntarily caused hurt to Bai Gunta, her husband Hana Ramji and Bhimsing Kathuria at village Devidav. The learned Judge held that it was proved by the prosecution that the accused Nos. 2,3 and 4 in furtherance of their common intention had wrongfully restrained Bai Gunta, her husband Hana Ramji and Bhimsing Kathuria. It was also concluded by the learned Judge that accused Nos. 2,3 and 4 in furtherance of their common intention had wrongfully confined Bai Gunta and her husband Hana Ramji and Bhimsing Kathurai. The learned Judge further held that it was proved by the prosecution that accused Nos. 2,3 and 4 in furtherance of their common intention had used criminal force on Bai Gunta to outrage her modesty. What was deduced by the learned Judge was that the accused Nos. 2,3 and 4 in furtherance of their common intention had committed gang rape on Bai Gunta on the night of January 5, 1986 in the cabin of the truck bearing registration No. : GTG 3512 and also in the early morning hours of January 6, 1986 at the varanda of the first floor of the building adjacent to the Sagbara police station. The learned Judge also held that it was proved by the prosecution that accused

nos. 2,3 and 4 had wrongfully confined Bai Gunta at the Sagbara police station. In view of the above referred to conclusions, the learned Judge vide judgement and order dated June 22, 1991 convicted the original accused Nos. 2, 3 and 4 for the offences punishable under Sections 376(2)(a)(g), 354, 341, 342, 323 read with Section 34 of the I.P.C. The learned Judge thereafter, heard the original accused Nos. 2,3 and 4 on the question of sentence and has imposed the sentence on them which is referred to earlier. The policemen, who have been convicted and sentenced have challenged their conviction in Criminal Appeal No. 464/1991. As far as original accused Nos. 1,5 and 6 are concerned, the learned Judge concluded that it was not proved by the prosecution that the accused no. 1 had gone to village Devidav in the company of other police officers, whereas, accused no. 5 was not properly identified by Bai Gunta at identification parade and identity of accused no. 6 as the one, who was sitting in the body of the truck with his gun in the company of Hana Ramji, Gulabsing etc. was also not established. In view of these findings, the learned Judge has given benefit of doubt to them and acquitted them which has given rise to Criminal Appeal No. 721/91 by the State Government.

22. At the time of hearing of the appeal, the learned counsel for the appellants in Criminal Appeal No. 464/91 stated at bar that appellant no. 1 i.e. Kantibhai Mangubhai has expired on October 6, 1999 and therefore, appeal filed by him should be treated as having abated in terms of Section 394 of the Code of Criminal Procedure, 1973. In support of this statement, the learned counsel has produced a true copy of death certificate issued by Registrar (Birth and Death) Bharuch Nagarpalika, Bharuch dated October 8, 1999, which indicates that Kantibhai Mangubhai Rana resident of Madhuvan Society, Bharuch expired on October 6, 1999. Mr. D.P. Joshi, Ld. APP has also produced on record, the original death certificate relating to the appellant no. 1, which indicates that the appellant no. 1 expired on October 6, 1999.

23. The learned counsel for the respondents in Criminal Appeal No. 721/91 further states at the Bar that respondent no. 2 i.e. Keshavbhai Maganbhai Patel has expired on April 7, 1997 and therefore, appeal filed against him should also be treated as having abated in terms of Section 394 of the Criminal Procedure Code, 1973. In support of his statement, the learned counsel has placed on record true copy of the death certificate issued by the Competent Authority, which indicates that

the respondent no. 2 i.e. Keshavbhai Maganbhai Patel resident of village Chandrada, Taluka : Ankleshwar expired on April 7, 1997. The fact that the appellant no. 1 in Criminal Appeal No. 464/91 and the respondent no. 2 in Criminal Appeal No. 721/91 have expired during the pendency of the appeals is not in dispute. Section 394 of the Code of Criminal Procedure Code inter-alia provides that every appeal under Section 377 or Section 378 shall finally abate on the death of the accused, whereas, Sub-section 2 of the said section provides that every other appeal under Chapter XXIX except an appeal from a sentence of fine shall finally abate on the death of the appellant. Therefore, Criminal Appeal No. 464 of 1991 filed by the appellant no. 1 is treated as having abated as far as he is concerned. Similarly the respondent no. 2 having expired during the pendency of the Criminal Appeal No. 721 of 1991 is also treated as having abated as far as he is concerned.

24. Mr. M.J. Buddhabhatti, learned counsel for the appellants in Criminal Appeal No. 464/91 and the respondents in Criminal Appeal No. 721/91 submitted that the evidence of Guntaben is neither reliable nor cogent and therefore, on the basis of her evidence, the appellants in criminal appeal No. 464/91 should not have been convicted of the offences punishable under Section 376(2)(a)(g) of the I.P.C. According to Mr. Buddhabhatti the story narrated by Bai Gunta is inherently improbable because, she did not raise shouts either when rape was being committed on her in the cabin of the truck or at the varanda of the first floor of the building adjacent to Sagbara police station and as her conduct was unnatural, her evidence ought to have been disbelieved by the learned Judge. What was claimed was that the incident of rape is alleged to have taken place during the winter night and as there was no light, it was difficult for Guntaben to identify the convicted appellants as perpetrators of the crime and therefore, appeal filed by the convicted appellants should be accepted. Mr. Buddhabhatti, learned counsel for the convicted appellants and the acquitted respondents pleaded that the medical evidence is shaky about the injuries on the private part of Guntaben and as her evidence indicates that she had moved from place to place after release from Sagbara Police Station, her evidence, which is full of contradictions and omissions should have been discarded by learned Judge. Further, it was argued that the evidence of Dr. Daxaben Patel regarding injuries sustained by Bai Gunta is in direct conflict with the medical evidence of Dr. Nareshchandra Saikhede and therefore, in any view of the matter, benefit of

doubt should be given to the convicted appellants. It was highlighted by the learned counsel for the convicted appellants that second incident of rape in the varanda of the first floor of the building adjacent to the Sagbara police Station is highly doubtful because one side of the varanda is open, whereas, the varanda is facing a bus stop, where passengers would be found normally and therefore, story of prosecution regarding rape on Guntaben in the varanda of the first floor of the building ought to have been disbelieved by the learned Judge. In order to explain his point that story of rape on Bai Gunta in the cabin of truck is inherently improbable, the learned counsel for the appellants submitted that in presence of 8 to 9 persons, who were sitting in the body of the truck, rape could not have been committed and therefore, this is a fit case wherein, benefit of doubt should be given to the convicted appellants. According to Mr. Buddhabhatti, Bai Gunta could not give description of any accused in her FIR and had introduced the story subsequently that she had identified the accused as light of battery was thrown on her at the time when she and her husband were woken up at village Devidav and as the evidence led by the prosecution regarding identification of accused is not trustworthy, the convicted appellants should be acquitted. Mr. Buddhabhatti further pleaded that the accused as well as prosecutrix were brought together in one jeep at the office of the Mamlatdar before identification parade was held and therefore, evidence regarding identification of the accused ought to have been disbelieved by the learned Judge. What was claimed was that, there was unreasonable delay in lodging the FIR by Bai Gunta which makes her story doubtful and therefore, benefit of doubt should be given to the convicted appellants. Further, it was stressed that independent witnesses were not examined by the prosecution to lend support to the story of rape on Bai Gunta and therefore, the appeal by the convicted appellants should be accepted. The Learned counsel for appellants referred to conduct of Bai Gunta in not disclosing the case of rape on her by the police officers either to her brother and / or relatives and pleaded that the false case having been made out against the police officers at the instance of father Joseph, the judgement impugned in the appeal should be reversed. The learned counsel referred to in extenso, the progress report submitted by police officer of Sagbara police station and pleaded that as the said report had exonerated the convicted appellants also, the appeal should be allowed. What was claimed was that the accused nos. 1,5 and 6 were falsely implicated by Bai Gunta in a serious case of

gang rape and as false implication of the convicted appellants is not ruled out, their conviction should be set aside. So far as acquittal appeal filed by the State Government is concerned, the learned counsel for the respondents submitted that the learned Judge has given cogent and convincing reasons for giving benefit of doubt to the acquitted respondents and even if, two views of the matter are possible, the High Court should not interfere with the order of acquittal in the appeal filed by the State Government.

25. Mr. D.P.Joshi, Ld. APP argued that the evidence of prosecutrix is cogent as well as trustworthy and therefore, learned Judge of the trial Court was justified in placing reliance on her deposition for the purpose of convicting the original accused Nos. 2,3 and 4 of the offence punishable under Section 376(2)(a)(g) of the IPC. According to Mr. Joshi, Ld.APP there was no flaw at all in holding of the identification parade and as accused Nos. 2,3 and 4 were duly identified by Bai Gunta at the said parade, the learned Judge did not commit any error in convicting them. What was highlighted by the learned advocate for State was that Bai Gunta had all opportunity to identify original accused Nos. 2,3 and 4 as persons, who had committed gang rape on her in the cabin of the truck as well as in the varanda of the first floor of the building adjacent to the Sagbara Police Station and therefore, their well founded conviction recorded by the learned Judge of the trail Court should be upheld by this Court. After referring to the contents of the panchnama prepared during the course of identification parade and the evidence of witness Madhavbhai Mithabhai Parmar, who had held identification parade, the learned counsel submitted that it is wrong to contend that the accused and the prosecutrix were brought together in one jeep and therefore, evidence adduced by the prosecution regarding identification of accused Nos. 2,3 and 4 as perpetrators of heinous crime should not be disbelieved on the ground that the prosecutrix had opportunity of seeing the convicted appellants before the identification parade was held. What was asserted by the learned APP was that there is nothing on the record of the case which would indicate that there was any enmity between the prosecutrix and convicted appellants or that in order to take revenge, she had falsely implicated them in the case and therefore, the learned Judge was justified in placing reliance on her testimony for convicting them of the offences with which, they were charged. Ld. APP further pointed out that in fact, the evidence of Dr. Nareshbhai Saikhede is thoroughly unreliable and therefore, no benefit of doubt should be given to the convicted

appellants on the specious plea that the medical evidence on record is of conflicting nature. The learned counsel for the State Government referred to the principles enunciated by the Supreme Court regarding appreciation of the evidence of a prosecutrix and submitted that the evidence of Bai Gunta, which is consistent and reliable should be acted upon for the purpose of upholding conviction of the convicted appellants. Learned counsel emphasized that though the law does not require that the evidence of a prosecutrix should be corroborated at all, the evidence on record establishes that her evidence is corroborated in material particulars not only by the medical evidence of Dr. Daxaben Patel but also by her husband Hana Ramji as well as witness Bhimsing Kathuria and therefore, the conviction appeal should be dismissed. The learned counsel for State of Gujarat referred to in detail the different findings recorded by the learned Judge and pleaded that the conviction appeal being substanceless, should be dismissed and conviction recorded by the learned Judge should be upheld by this court. In support of his submissions the learned A.P.P. placed reliance on the decision rendered in (i) Shri Bodhisattwa Gautam Vs. Ms. Subhra Chakraborty, reported in AIR 1996 SC P.922. (ii) State of Punjab Vs. Gurmitsing and others, reported in AIR 1996 SC P.1393 and (iii) State of Andhrapradesh Vs. Gangula Satya Murthy, reported in AIR 1997 SC P. 1588.

As far as acquittal appeal is concerned, the learned APP claimed that the documentary evidence produced by the prosecution establishes beyond reasonable doubt, that the acquitted respondents had also gone to village Devidav alongwith convicted appellants and therefore, the learned Judge of the trial Court was not justified in holding that the presence of the respondents at village Devidav was doubtful. After referring to the evidence of court witness No. 1 Bhimsing J. Parmar and court witness No. 2 Jagatsing Vajesing Puvar, the learned counsel for the State Government pleaded that evidence of these two witnesses proves that the acquitted respondents had also gone to village Devidav and as their presence at the said village is proved, the acquittal appeal should be allowed. The learned counsel referred to the evidence on record regarding note-books prepared by the acquitted respondents, wherein, their movements is recorded and submitted that the learned Judge of the trial Court was not justified in holding that the CBI had forcibly got prepared the diaries in this case. Further, the learned counsel referred to the evidence of Bai Gunta as well as that of her husband and submitted that as acquitted original accused no. 6 was identified by them

before the court as one who was sitting in the body of the truck with his gun, his acquittal should be reversed by this Court.

26. We have heard the learned counsel for the parties at length and reappreciated the whole evidence on record. The prosecution case leading to the gang rape on Bai Gunta is unfolded by six prosecution witnesses namely Bai Gunta, her husband Hana Ramji, witness Bhimsing Kathuria, witness Karamsinh Vasava, witness Madhavbhai, Dr. Dakshaben Patel etc. Therefore, it would be relevant to summarise their evidence and notice salient features appearing therefrom.

27. The prosecutrix Bai Gunta is examined in this case as PW -1 at Ex. 67. Her evidence shows that she is the second wife of Hana Ramji and at relevant time, she was residing with her husband at village Devidav, which is situated in the interior part of Taluka Sagbara, a backward area inhabited by illiterate Adivasi community. The evidence of prosecution witnesses establishes that village Devidav is not accessible by any vehicular traffic and the vehicle can go only upto village Gorda. The evidence of Bai Gunta indicates that Hana Ramji's uncle Roopji Nakta is also resident of village Devidav and the name of son of Roopji Nakta is Kana Roopji. Further, her evidence shows that on or about January 3, 1986 two girls namely Bai Sakra and Indira of village Taval had come to the house of Bhimsing Keriya, who was also a resident of village Devidav and Bai Sakra and Indira were invited for meals at the house of Roopji Nakta whereas she had invited both these girls for a cup of tea on the next day. She has stated in her deposition that after taking tea Bai Gunta in the company of Bai Sakra and Indira had gone to the field of her husband for plucking Tever Fali and in the meantime, Kana Roopji accompanied by Jesing Karsa had entered the field and Kana Roopji had caught hand of Bai Sakra and tried to take her away forcibly in the forest direction. It is also stated by Bai Gunta in her deposition that she and Indira had tried to rescue Bai Sakra but Jesing Karsu had slapped them and that after returning home from the field, she had narrated the incident to Roopji Nakta, who is uncle of her husband. Her evidence shows that she had instructed Roopji Nakta to inform her husband about the incident as her husband was not in the village and had gone to village Pati for carpentry work of a house of his relative. During course of her deposition, she informed the Court that on the next day, Hana Ramji had made frantic efforts to find out Bai Sakra and Kana Roopji but in vain. She also informed that her husband in the

company of other persons had gone to other villages also in search of Bai Sakra but missing Bai Sakra could not be traced. According to her, some people of village Taval had come to house of Bhimsing, where, her husband had suggested to all the persons to go in search of Bai Sakra but the search did not yield any result. Her deposition shows that as Bai Sakra could not be traced, her husband Hana Ramji had returned to village Devidav.

28. The prosecution evidence shows that Bai Sakra's father Mr. Ubadiabhai alongwith Gulabsing Talati and Police Patel Chhagan of village Taval had gone to Sagbara police station to inform about the kidnapping of his daughter and on receipt of the information, five policemen i.e. the convicted appellants and respondents in the acquittal appeal alongwith other persons namely Gulabsing and Chhaganbhai had started for going to village Devidav from Sagbara in a private truck, which was hired by Gulabsing Talati. The prosecution evidence further shows that the search party consisting of police officers and others had reached village Gorda and as the road to village Devidav was not accessible, the truck was left at village Gorda and all had walked to reach village Devidav. The policemen and others had reached Devidav at about 12.00 midnight on January 5, 1986, which is evident from the evidence of witness Bhimsing Kathuria. On reaching Devidav, the police personnel had gone to the house of Hana Ramji and at that time, Hana Ramji was found sleeping with his wife Bai Guntaben in the backyard of his house. According to Bai Gunta one of the police officers had thrown torch light on her face, whereas, Gulabsinh, the talati of village Taval had uttered that this was the woman who was responsible for kidnapping of Bai Sakra and therefore, all the five policemen had started beating Hana Ramji and her and they were asked about the whereabouts of Bai Sakra. The case of Bai Gunta is that two policemen out of whom one was carrying a gun had gone to the house of Roopji Nakta, where, Bhimsing Kathuria, who is son-in-law of Roopji Nakta was found sleeping. The evidence of Bhimsing Kathuria indicates that he was also severely beaten by the two policemen and was brought to the house of Hana Ramji. Thereafter, Hana Ramji as well as Bhimsing Kathuria were tied with ropes and brought to the house of police Patel of the village Devidav alongwith Bai Gunta. The evidence of three witnesses further establishes that as it was a chilly night, the policemen had asked to light fire and thereupon, one Kiliyabhai had lit the fire and Bai Gunta was asked to stand near the fire. Bai Gunta has firmly and positively stated in her deposition that Gulabsing, who was Talati of village Taval had told the policemen

that she was the lady, who had insulted the girl of our village and therefore, her modesty should be outraged. According to Bia Gunta on hearing these words, the policemen had asked her to take off her clothes and on her refusal to do so, one policeman had caught hold of her hand, whereas, other had removed her clothes and she was made to stand in a naked condition for half an hour near the fire. According to Bai Gunta after making her to stand in a naked condition for half an hour, the policemen had asked her to put on her clothes and after she had put on her clothes, the policemen had brought rope from the house of Police Patel and tied her with rope. Her evidence shows that thereafter, she, her husband and Bhimsing Kathuria were taken to village Gorda by the policemen as well as Gulabsing Talati and other persons of village Taval, who had come to village Devidav. The evidence of the three witnesses further shows that one motor truck was standing at village Gorda, wherein, she was made to sit in the front side of the truck, whereas, her husband Hana Ramji, Bhimsing Kathuria and others were asked to sit in the body of the truck alongwith the policeman who was carrying a gun. According to her in the truck, she was untied and the truck driver was directed to drive the truck towards Sagbara. Bai Gunta in her evidence has specifically stated that on way to Sagbara, when the truck had reached village Devmogra, the policemen sitting with her had asked the driver to stop the truck and after the truck had halted, the driver was asked to get down. Further, she has very specifically stated that the four policemen had asked to take off her clothes and on her refusal to do so, one policeman had caught hold of her hands and other had caught hold of her legs and the third had removed her clothes and after removing her cloths, she was made to lie down on the seat of the left side of the truck. Bai Gunta in her substantive evidence before the Court has emphatically stated that in that position, all the four policemen had committed rape on her one by one and that the truck had stopped at village Devmogra for about half an hour. According to her after committing rape, the policemen had asked her to put on her clothes and driver was called and was instructed to take the truck to Sagbara.

29. The deposition of Bai Gunta further shows that they had reached Sagbara in the early hours of January 6, 1986 and the four policemen, who were sitting with her had taken her to the first floor of the building adjacent to the Sagbara Police Station, whereas, her husband and Bhimsing kathuria were taken to Sagbara Police Station. According to her in the varanda of the building adjacent

to the Sagbara police station, she was again asked to remove her clothes and on her refusal to do so, one policeman had caught hold of her hands, whereas, other had removed her clothes and thereafter, she was made to lie down on the floor of the varanda, where, all the four policemen had again committed rape on her one after another. Bai Gunta has narrated in her deposition that after committing rape on her, one policeman had given thrust with a lathi on her private part, as a result of which, there was bleeding from her vagina. Her evidence further shows that after she had put on her clothes, she was brought down and taken in one room of Sagbara Police Station. Her case is that in the morning at about 7 a.m. she had come out of the police station to wash her mouth and had seen that her husband as well as Bhimsing Kathuria were also in the lock-up of the police station. According to her, at about 8 a.m. PSI Joshi had come at the police station and after inquiring about Sakraben, had given 2-3 slaps on her ear. Her evidence shows that at about 9 a.m. Bai Sakra and Kana Roopji had come at the police station and the policemen of Sagbara police station had also severely beaten Kana Roopji and put him behind the bars. Her evidence as well as that of her husband and witness Bhimsing establishes that thereafter, Bai Gunta, Hana Ramji, Bhimsing Kathuria, Jesing were detained at the police station till 4 p.m. of January 7, 1986 and after they were released from the police custody, Jeharia Bhatia had met them and informed that he had paid Rs. 2000/- to PSI Joshi for releasing them from the police custody. Her evidence further shows that after the release, she had informed her husband about rape committed on her by the policemen of Sagbara police station and both of them had gone to village Gundvan at the house of one Pratap. She has specifically stated in her evidence that at village Gundvad, Roopsing Dhana had met them and she and her husband had told Roopsing about the rape committed by policemen on her. According to her, Roopsing Dhana had advised to go to Rajpipla Government hospital for medical examination and they had accordingly gone to the hospital, but as the doctor had refused to examine her, they had gone to the office of Free Legal Aid, where, they had met father Joseph and she had narrated the incident of rape on her to father Joseph. What is claimed by Guntaben in her evidence is that in the office of Free Legal Aid, one advocate and other persons were present and the advocate after hearing her version had told her husband that they should approach the office of DSP and she was told to come on the next day for the purpose of collecting the application. According to her, because of the injuries on her private part, there was profuse bleeding and as

she was suffering severe bodily pain, she was taken by father Joseph in jeep to village Magrole, where, Dr. Daxaben Patel had treated her. Her evidence further shows that she had narrated the incident of rape on her in detail to Dr. Daxaben Patel and after taking treatment, they had returned to Rajpipla in the jeep of father Joseph. Further, according to her, on the next day morning, they had gone to the office of Free Legal Aid, where, one advocate was present who had taken her thumb impression on the application prepared by him and she in the company of her husband and Roopsing Dhana had gone in the jeep of father Joseph to the office of DSP, Bharuch, where, she had presented the application at about 5 p.m. According to her, the officer, who was present in the office of DSP had asked her to go to the Government hospital either at Rajpipla or at Dedipada or at Sagbara for treatment and on the next day she in the company of her husband and others had gone to the Government Hospital Rajpipla but the doctor had refused to treat her as she had not brought police yadi with her. According to her, they had returned to the office of father Joseph and stayed there over night. Her evidence further shows that on the next day, one advocate from Delhi and another from Ahmedabad had come in the office of father Joseph and both the advocates had taken her to the Rajpipla Hospital, where, she was provided with medical aid, after, which the advocates had taken her to the Government rest house, where Government officers, who were present there had collected details about the incident from her and she was taken to the Rajpipla police station. Her evidence further shows that at Rajpipla police station, complaint was recorded by the Circle Police Inspector and investigation was made by the officer. The prosecution evidence establishes that as the offence of rape had taken place within the jurisdiction of Sagbara police station, the investigation was transferred to Sagbara police station and it was registered as CR. No. 2/86. The evidence of Bai Gunta would show that when she had reached Sagbara police station, PSI Joshi was present and he had asked Bai Gunta that she should not disclose any fact about the rape committed on her by the policemen, otherwise, she would be again handed over to them. It is further stated by her in her deposition before the court that in the meantime the principal of Sagbara High School had come to the police station and he had also advised her not to disclose about the rape committed on her by the policemen. According to this witness, Mr. Joshi had told her that if the incidents of rape were not disclosed, he would pay her Rs. 2000/-.

30. The evidence of Bai Gunta further shows that at about 11.30 a.m. she and her husband were taken in one jeep to Mamlatdar's office at Sagbara and they were accompanied by one lady constable as well as others, whereas, PSI Joshi and Jamadar Bhaskar were following them on a motor-cycle. According to her, after reaching office of Mamlatdar, she and her husband were asked to purchase two stamp papers each of Rs. 10/- and on amount being paid, Jamadar Bhaskar had purchased the stamp papers. She has specifically claimed in her evidence that her thumb impression was taken in the sale register of the stamp paper and after purchasing stamp papers, they were taken in jeep to the High School, where, she and her husband were made to sit in the jeep, whereas, Jamadar Bhaskar and PSI Joshi had gone inside the building of the high school and had called them in one room of the high school after an hour. What is claimed by Bai Gunta in her deposition is that PSI had caught hold of her hand and taken her thumb impression on the stamp paper on which there was some writing but the said writing was not read over or explained to her. According to her in the same manner, thumb impression of her husband was also taken on another stamp paper and after taking their thumb impressions, they were again taken to Mamlatdar's office in the jeep and PSI Joshi and Jamadar Bhaskar were following them on a motor-cycle. She has stated in her deposition that at the Mamlatdar's office, again PSI Joshi had taken her thumb impression on the stamp paper and thereafter, they were taken to Sagbara police station and were released on the next day. She has also stated in her evidence that the advocates from Delhi and Ahmedabad had learnt about the false affidavits having been obtained from her and her husband etc. This witness has also referred to identification parade held in the office of Mamlatdar, Sagbara on January 19, 1986 and claimed that she had identified the accused. She also identified the accused Nos. 1 to 4 before the court as policemen, who had committed gang rape on her.

31. In her cross examination this witness has admitted that 8 to 10 persons were sitting in the body of the truck, when the truck was boarded at village Gorda. She also admitted that she had not given description of persons who had committed rape on her in her FIR Ex. 68. In her cross-examination she explained that she had not given description of the persons who had committed rape on her before the CBI officer, because, the officer had never tried to know the description of those persons from her. She has stated that on the first occasion, she had identified two persons by mistake as the persons who had committed rape on her but on the second occasion, she had

identified the accused Nos. 2, 3 and 4 as policemen, who had committed rape on her. In her cross examination, she maintained that the police officers had committed rape on her in the truck as well as in the varanda of the first floor of the building situated adjacent to Sagbara police station and that because of injuries caused by means of stick on her private part, there was profuse bleeding therefrom. In her cross examination, she pleaded ignorance about the fact that one forest officer was staying on the ground floor of the building, where rape was committed on her. The witness has categorically stated in her cross examination that Roopsing Dhana had asked her to go to Rajpipla hospital for treatment and she had not suggested to go to Sagbara Hospital because policemen of Sagbara police station had committed rape on her. According to her, she had no information that at village Dediapada, there was a Government dispensary or not and therefore, they had gone to Rajpipla hospital for treatment. The witness has further stated in her cross examination that she had not stated before the Collector that her thumb impression and that of her husband were obtained by Narottambhai Guruji (the principal of Sagbara High School). She has in her cross examination stated that because of darkness she was not able to make out colour of the truck in which she was made to sit. She did not remember whether she had mentioned in her police statement that she was made to sit in the truck and the policemen had asked her to remove her clothes. She admitted that she had not stated in her police statement that on her refusal to do so, one policeman had caught hold of her hands whereas other policeman had caught hold of her legs and that third policeman had removed her clothes, after which, she was made to lie down on the seat. During the course of cross examination, the witness also maintained that after gang rape was committed on her in the truck, profuse bleeding from her private part had taken place and during that time, her husband and others were sitting in the body of the truck. The witness has explained that because of embarrassment, she did not narrate the incident of rape to others except her husband. She denied the suggestion that she had cooked up the case against the policemen as per the plan hatched by father Joseph and advocates, who were present in the office of the free Legal Aid.

32. Coming to the evidence of witness Hana Ramji PW-4 Ex. 74, we find that the witness has clearly stated in his evidence that in the night of January 5, 1986 the policemen accompanied by Gulabsing Talati and Chhganbhai of village Taval had come to his house and had beaten him as well as his wife. He has also stated that Bhimsing

Kathuria was also beaten by the policemen. According to this witness, thereafter, the policemen had tied his hands and hands of Bhimsing Kathuria, after which, they were taken to the house of Police Patel of his village, where the policemen had removed clothes of his wife Guntaben against her wish. The witness has further stated that thereafter, they were taken to village Gorda and in the truck he was made to sit in the body of the truck whereas, his wife was made to sit on the front seat of the truck. The witness has further informed the Court that the truck had stopped on way to Sagbara for half an hour at village Devmogra and from there, in the truck they had reached Sagbara police station in the early morning on January 6, 1986 and that he was separated from his wife. The material fact stated by this witness in his deposition is that after they were released from the police station, his wife had informed him that she was raped by policemen twice. The witness has also referred to in detail as to how he had gone to office of free Legal Aid at Rajpipla and complaint was lodged at the office of DSP Bharuch. The witness has referred to in detail about the false affidavits, which were got sworn from him and his wife by PSI Joshi and Jamadar Bhaskar. In his cross examination, the witness has stated that though he had sustained injuries because of the beating by policemen, he had not taken any treatment at Rajpipla Government Hospital. The witness admitted that in the departmental inquiry, which was conducted against the police officers, he had not stated that the truck was stopped for half an hour at village Devmogra. The witness further stated that at Rajpipla police station, police officer had asked his wife Guntaben to hand over the clothes put on by her but his wife had refused to hand over clothes to the police officer as she had no other pair of the clothes. He denied the suggestion made by the defence that as father Joseph had assured that he would get compensation from the Government, he was deposing falsely at the instance of father Joseph. He admitted that he had not stated before the officers who had collected at Rajpipla rest house that he was made to sit in the body of the truck. He denied the suggestion made by the defence counsel to the effect that at the instance of Roopsing Dhana, he and his wife had filed false complaint against the policemen. He asserted before the Court that he had not stated before police officer at Rajpipla that the policemen had not committed rape on his wife or had sexual intercourse with her or that he and his wife were not tied with ropes and that thumb impression of his wife was obtained on an application prepared by Roopsing Dhanabhai Vasava. It is relevant to note that the version of this witness namely

that at the house of police Patel of village Devidav, his wife was made naked by the policemen was not challenged at all during the course of his cross examination.

33. Witness Bhimsing Kathuria PW -6 Ex. 78 has also stated in his evidence that the policemen from Sagbara police station had come to his village and he was beaten as well as tied with the rope. This witness has also informed the court that at the house of police Patel of village Devidav, Guntaben was made naked and on seeing her in a naked condition, the wife of police Patel had run away. According to this witness, he was made to sit in the body of the truck alongwith Hana Ramji and others, whereas, Bai Gunta was made to sit in the cabin of the truck and the truck had stopped for half an hour on way to Sagbara police station at village Devmogra. The witness has informed the Court that after reaching Sagbara police station, he was placed in lock up but he had not seen Guntaben in the police station. In his cross examination, the witness has denied the suggestion made by the defence that alongwith Guntaben two other women were also made to sit in the cabin of the truck. The witness has further stated in his cross examination that he did not know as to why the truck was stopped at village Devmogra for half an hour before reaching Sagbara police station.

34. The evidence of witness Karamsing M. Vasava PW-8 Ex. 90 and testimony of witness Madhavbhai M. Parmar PW-9 Ex. 93 read together with the contents of panchnama of identification parade, would indicate that on January 19, 1986 Guntaben had identified the accused nos. 2 to 4 at the identification parade held at Mamlatdar's office by Dy. Mamlatdar Mr. Parmar. The evidence regarding test identification parade shows that all the precautions were taken to see that Bai Gunta had no opportunity of seeing any of the accused. The evidence regarding identification of the accused would further show that on the second occasion, all the four accused were identified by Bai Gunta and in the third round also Bai Gunta was able to identify the four accused, who were identified by her in the second round. While tendering her evidence before the Court also, she was able to identify accused Nos. 1 to 4 as perpetrators of the crime. However, we propose to consider the evidence regarding identification of the accused in detail a little later.

35. The evidence of Dr. Daxaben Anilbhai Patel PW-10 Ex. 96, establishes that on January 9, 1986, she was working as doctor in "Action Research in Community Health Development" at Mangrol and had examined Bai Gunta

Hanabhai who had come to her hospital with her husband and one another person Roopsing. The doctor has firmly stated before the Court that Bai Gunta had told her about the lathi thrust given to her by the policeman on her private part as well as rape committed on her by four policemen twice in the morning hours of January 6, 1986. The evidence of this doctor indicates that Bai Gunta had informed the doctor that she had resisted and protested at the time when rape was committed on her but two policemen had gagged her mouth as well as caught her and thereafter she was raped one after another. On examination of person of Bai Gunta, the doctor found following injuries :-

(i)3" long lash mark on left side of the neck (ii) 2" X 1" long lash mark on the left lower chest (iii) 1" long lash mark on the Rt. lower back of the chest (iv) Bruises on lateral aspect of the Rt. thigh (v) Bruises 6" X 3" on left buttock (vi)Bruises 5" x 4" on Rt. buttock

On the internal examination, the doctor did not find marks of injuries on external genitalia. According to the doctor while conducting internal examination, Bai Gunta had complained of pain and at the time of introduction of speculum she had complained of pain. The doctor had found that vagina wall was reddish and there were no laceration marks on the vaginal wall. Further the doctor did not find cervical tears but found that blood was coming out from the external os of cervix. According to the doctor on making inquiries about the last menstrual period, the doctor was informed by Bai Gunta that she had menstruation about 15 days ago. The doctor has stated that she had prepared certificate regarding examination of Bai Gunta and had issued the same which is on the record of the case at Ex. 97. According to doctor, Bai Gunta had again visited her dispensary on February 4, 1986 and on examination, she had found one small bruise on her right buttock. During the cross examination she stated that her statement was recorded by Dy.S.P. on March 28, 1986 and that in the said statement she had stated that Bai Gunta was brought to her hospital on January 9, 1986 by father Joseph of Rajpipla. The doctor explained in her cross examination that there are many kinds of injuries namely (i) incised wound (ii) Laceration (iii) Abrasion (iv) Gun shot wound (v) Bruises, (vi) fractures and that lash mark mentioned by her in her certificate of injuries of Bai Gunta meant "long bruise". She also admitted that when the history of the patient was narrated to her, she knew that it was

a madico legal case. The doctor further explained that if a woman is raped by four persons at a time, there may be tear of vaginal wall but this may happen in one case and may not happen in another.

36. Witness Bhimsing Jesinh Parmar, who was examined as Court witness no. 1 at Ex. 129 has referred to the investigation made by him before the investigation was handed over to the CBI pursuant to the direction of the Supreme Court and produced progress report of the investigation. Similarly, Jagasinh Vajesing, Court witness no. 2 Ex. 130 has informed the Court about the steps which he had taken as Dy.S.P. of Rajpipla Division during the course of investigation by local police. According to this witness, he had asked Bai Gunta and her husband Hana Ramji as to why they had sworn affidavits in which it was stated that the policemen had not committed rape on Bai Gunta after filing complaint on January 12, 1986, and both of them had stated before him that the facts stated in the affidavits were true. This witness has also stated before the Court that investigation parade was held at his instance and he had not played any role in the investigation after January 22, 1986. During the cross examination, the witnesses admitted that on January 7, 1986 an application was submitted by relative of Bai Sakra regarding likelihood of breach of peace taking place at village Devidav.

37. Dr. Naresh Gopalchandra Saikhede - defence witness No. 1 examined at Ex. 138 stated before the Court that on January 12, 1986 he was working as Resident Medical Officer in Civil Hospital, Rajpipla and had examined Bai Gunta Vasava, who had come to the hospital without yadi from the police. According to the doctor, he had not found any external injury on her body though he had examined her body e.g. head, neck, throat, abdomen, thigh, legs, arms, hands etc. The doctor further stated before the Court that neither blood nor semen stains were detected from the clothes of Bai Gunta. The doctor claimed before the court that he had taken the history of patient Guntaben and according to her she was raped by some people on January 5, 1986 at about 10 p.m. The doctor further stated that Bai Gunta was enjoying her married life with her own husband in the night but as she had developed some complaint due to irregular menstruation, she was brought to the hospital by her husband for treatment on January 12, 1986. The doctor referred to the certificate issued by him and stated that the contents of the said certificate were true. In cross examination by the learned Special P.P. for the State, the witness admitted that he had not prepared rough note

regarding medical treatment given to Bai Gunta nor had entered the name, sex, age and medico legal case number of the patient in the register maintained at the hospital. The doctor admitted that the survival age of the spermatozoa is 24 to 36 hours and he had taken the swab of Guntaben but had not found any spermatozoa on the swab. According to this doctor, if a woman is raped on a hard surface, there may or may not be injuries on her buttocks, thigh and lower part of the chest but if a woman is pressed very hard on her chest, there will be impact of the object used and the colour of the impact initially will be red and will gradually change its colour to blue and later on black. The doctor admitted that there was a departmental inquiry instituted by the Government of Gujarat against him, in which, the statement of Dr. Daxaben Patel was recorded and that he had resigned form service during the pendency of the departmental inquiry. The doctor pleaded ignorance as to whether, there are seven columns in the register of medico legal cases but stated that there is a column of injuries sustained by the victim and the injuries are mentioned in the register of medico legal cases.

38. We may state that the prosecution has led evidence of Vasant Giriya Vasava in support of its case that false affidavits were got prepared from Bai Gunta and her husband by PSI Joshi and Jamadar Bhaskar. The evidence of witnesses i.e. Ramsing D. Gohil PW-3 Ex. 72 regarding drawing of panchnama at the time of seizure of clothes of accused, (ii) evidence of witness Ishwarbhai Mohanbhai PW-5 Ex. 75, (iii) evidence of witness Mohanbhai D. Patel PW-7 Ex. 79 in whose presence panchnama of place of incident were prepared, (iv) evidence of witness Komalcharan S. Agrawal PW-11 Ex. 101 who was the Director of FSL and who had examined the building where the rape was committed on Bai Gunta (v) evidence of witness Vipulbhai Bakulbhai PW-12 Ex.103 and (vi) the evidence of I.O. is discussed in detail by the learned Judge in the impugned judgement and therefore, we are of the opinion that it is not necessary to burden this judgement with the discussion of their evidence again in the present judgement. However, as and when necessary, we propose to refer to their part of evidence in the present judgment.

39. From the discussion of evidence on record it is evident that Bai Sakra who had gone to the field of Hana Ramji in the company of Bai Gunta and Bai Indira was forcibly taken away by Kana Roopji and an attempt made by Bai Gunta and Indira to rescue her did not yield any result. Further, it is proved that father of Bai Sakra

had informed Sagbara police station about the kidnapping of his daughter by Kana Roopji. The registers of Sagbara police station which were seized during the investigation indicate that the information disclosed by father of Bai Sakra was not reduced into writing nor any complaint was registered and without filing formal complaint, police party was despatched to village Devidav to trace Bai Sakra. The policemen after reaching village Devidav had beaten Bai Gunta, her husband and witness Bhimsing Kathuria. The evidence regarding Guntaben having been beaten by the policemen is amply corroborated by the medical evidence of Dr. Daxaben Patel and the injury certificate issued by her. Further, Guntaben has stated in her evidence before the Court that her husband Hana Ramji as well as Bhimsing Kathuria were also beaten by the policemen and this part of the evidence stands corroborated by the sworn testimony of Hana Ramji as well as that of Bhimsing Kathuria. We may state that during the cross examination, this part of the evidence was not seriously challenged on behalf of the accused and therefore, the finding recorded by the learned Judge that policemen had beaten Bai Gunta as well as Hana Ramji and Bhimsing Kathuria and committed offence under Section 323 read with Section 34 of the IPC because they had formed common intention to beat the witnesses on the spur of the moment is eminently just and is hereby upheld. The contention that in absence of medical evidence regarding injuries sustained by Hana Ramji and Bhimsing Kathurai, original accused Nos. 2, 3 and 4 could not have been convicted of the offences punishable under section 323 read with Section 34 of the IPC has no substance. The evidence of witness Hana Ramji and Bhimsing Kathurai would indicate that they are rustic adivasi people. As such they do not have any axe to grind against the policemen of Sagbara police station. They have no reason to state falsely that they were belaboured by policemen of Sagbara Police Station. Their evidence gets ample corroboration from injured Guntaben. It is to be remembered that according to the case of prosecution Bai Gunta was subjected to gang rape by policemen. Further though attempts were made to get her treated at Rajpipla Government hospital, the doctor had refused to treat her. Under the circumstances, it cannot be said that Hana Ramji and Bhimsing Kathuria had refused to take treatment for their injuries with an oblique motive. One of the modes of proving injuries sustained by person is production of injury certificate and its use is as a corroborative piece of evidence but production of certificate is not sine-qua-non for proving factum of injury. Ultimately, it all depends upon reliability of evidence adduced and supporting circumstances. If the

evidence regarding injury sustained by a prosecution witness, which is subjected to cross examination is found to be reliable, it can be acted upon. On over all view of the matter, we are satisfied that cogent reasons have been given by learned Judge for convicting the accused nos. 2, 3 and 4 of the offences punishable under Section 323 read with Section 34 of the I.P.C and the same is hereby upheld.

40. Further the case of the prosecution is that after beating Bai Gunta as well as Hana Ramji and Bhimsing Kathuria, Hana Ramji and Bhimsing Kathuria were tied with rope and were taken to the house of Police Patel of village Devidav, where, Bai Gunta was stripped naked and was made to stand in that position for half an hour. So far as this part of the story of the prosecution is concerned, the evidence of Bai Gunta clearly shows that near the house of Police Patel fire was lit at the instance of policemen and Gulabsing who is Talati of village Taval had uttered words that Bai Gunta was the person, who had insulted the girl of their village and therefore, her modesty should be outraged. According to her, thereupon, the policemen had asked her to remove her clothes and on her refusal to do so, one policeman had caught hold of her hands and the other policeman had removed her clothes and she was made naked. The evidence of Bai Gunta in this respect is amply corroborated by the evidence of her husband Hana Ramji, who has stated that at the house of Police Patel his wife Guntaben was made naked by the policemen. As observed earlier, this part of the story narrated by witness Hana Ramji is not challenged during the course of his cross examination at all. Further witness Bhimsing Kathuria PW-6 Ex. 78 has also stated in his substantial evidence before the court that at the house of Police Patel of village Devidav, Guntaben was made naked by the policemen. Though, Guntaben and witness Bhimsing were cross examined regarding incident of stripping Guntaben naked, nothing substantial could be elicited so as to doubt their version as given in their examination-in-chief. Section 354 of the IPC deals with the offence of use of criminal force to a woman with intention to outrage her modesty. The evidence on record clearly establishes that the policemen who had come from Sagbara police station had used criminal force to Bai Gunta intending to outrage her modesty and therefore, we are of the opinion that the conviction of the concerned policemen for the offence punishable under Section 354 read with Section 34 of the IPC is perfectly justified.

41. The prosecution case further is that from village

Devidav, Bai Gunta, her husband and Bhimsing Kathuria were taken to village Gorda and were made to board a truck. The evidence of Bai Gunta establishes that she was made to sit in the front seat of the truck, whereas, her husband and Bhimsing Kathuria with others from village Taval were made to sit in the body of the truck with an armed police constable. According to Bai Gunta, she was tied with rope from the house of Police Patel but after boarding the truck, she was untied and when the truck reached village Devmogra, the driver was asked to stop the truck and get down. What is claimed by her is that the four policemen who were sitting in the front portion of the truck had asked her to remove her clothes and on her refusal to do so, one policeman had caught hold of her hands, whereas, the other policeman had caught hold of her legs and the third policeman had removed her clothes. This witness has further deposed that after removal of her clothes, she was forced to lie down on the left seat of the cabin of the truck and in this position, all the four policemen had committed rape on her one by one. The witness has claimed that the truck had stopped at village Devmogra for half an hour and after committing gang rape on her, she was asked to put on her clothes. The witness has further deposed that thereafter, driver was called and instructed to drive the truck towards Sagbara police station.

42. The witness has also deposed that on reaching Sagbara police station, she was separated from her husband and taken to first floor of the building adjacent to Sagbara police station, whereas her husband and Bhimsing Kathuria were taken to Sagbara police station. As per the claim made by this witness, after taking her on the first floor, the policemen had again asked her to remove her clothes and on refusal to do so, one policeman had caught hold of her hands and the other policeman had removed her clothes and thereafter, she was made to lie down on the varanda of the first floor, where all the four policemen had committed rape on her one after another. According to this witness, after committing rape on her, one policeman had caused injuries on her private part by means of stick as a result of which, she had sustained bleeding injury.

43. Though, Bai Gunta is cross examined at length but nothing substantial could be brought out, which would cast doubt about her version of the gang rape committed on her. The law on the subject is well settled. The testimony of victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate

looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. The Supreme Court in The State of Punjab (Supra) has observed that seeking corroboration to testimony of prosecutrix before relying upon the same, as a rule, in such cases amounts to adding insult to injury. The Supreme Court, after holding that the evidence of a girl or a woman who complains of rape or sexual molestation should not be viewed with doubt, disbelief or suspicion, as rule has held that the evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. According to the Supreme Court, just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. What is emphasized by the Supreme Court in the said decision is that the corroborative evidence is not an imperative component of judicial credence in every case of rape and corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. After explaining that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice, the Supreme Court has held, that inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty.

44. In view of the principles laid down by the Supreme Court which have been referred to earlier, stated and restated in catena of decisions, we are of the opinion that the case of gang rape on Bai Gunta is amply proved by her substantial evidence before the Court. Her evidence inspires confidence. The minor contradictions found in the cross-examination of prosecutrix are not of fatal nature to throw out a otherwise reliable case. Her evidence has got to be appreciated in the light of principles laid down in well known case of Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753. Therefore, without seeking any corroboration, the case of

gang rape on her deserves to be accepted.

45. Even if one were of the opinion that the court out of abundant precaution should seek corroboration, we find that there is ample corroboration on the record of the case, to the case of gang rape on Bai Gunta as claimed by her. The evidence of Bai Gunta makes it evident that as soon as she and her husband were released from Sagbara police station on January 7, 1986 at about 4 p.m., Bai Gunta had immediately narrated the fact of gang rape on her to her husband. Her not informing her brother and others about the gang rape committed on her by the policemen is quite understandable because, a woman who hails from Adivasi community which is a tradition bound non-permissive society, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of her danger of being ostracized by the society or being looked down by the society. She had informed her husband about the incidents of rape on her and therefore, her not informing her brother and others cannot be viewed as unnatural conduct on her part. Bai Gunta has claimed in her statement that because of shame, she had not informed her brother and others about gang rape committed on her by the policemen and this claim deserves acceptance in view of the facts and circumstances of the present case. It is relevant to notice that Bai Gunta had no opportunity of meeting any policeman of Sagbara Police Station before the incident in question and but for the incident of kidnapping of Bai Sakra, probably, the policemen from Sagbara police station might not have visited her house. The record of the case does not show that Bai Gunta had any enmity against any policeman of Sagbara Police Station and therefore, such a rustic woman had no reason to falsely implicate the policemen of Sagbara police station in such a serious case. The suggestion of the defence that Bai Gunta had filed false complaint against policemen of Sagbara police station and others at the instance of father Joseph or others is not substantiated at all. The record of the case does not indicate that father Joseph had any grievance or grudge against any policemen of Sagbara Police Station. In fact, he had helped a helpless woman in distress by taking her to the office of Free Legal Aid and getting her treated at Mangrol Hospital by Dr. Daxaben Patel. Nothing is brought on the record of the case from which, one can conclude that father Joseph was illdisposed towards policemen of Sagbara police station and therefore, had instigated Bai Gunta to file false complaint against the policemen of Sagbara Police Station. Thus, Bai Gunta had no reason to

implicate any policeman of Sagbara Police Station in this case falsely. Further, her case of gang rape on her is amply corroborated by medical evidence of Dr. Daxaben Patel. In view of the principles laid down by the Supreme Court in Parmanand Katara Vs. Union of India, AIR 1989 S.C. 2039, Dr. Daxaben was justified in treating Bai Guntaben. Dr. Daxaben Patel has also stated in her substantial evidence before the court that Bai Gunta had stated before her that four policemen had committed rape on her twice. On medical examination, the doctor had found injuries on person of Bai Gunta which have been noticed earlier. This doctor has no reason worth the name to depose falsely before the Court. Thus, in material particulars, the evidence of Bai Gunta stands corroborated by medical evidence also. The contention that the story of gang rape committed on Bai Gunta is inherently improbable and therefore, appeal filed by the original accused nos. 2, 3 and 4 should be accepted by the Court, is devoid of merits. In our view, the story of gang rape on Bai Gunta cannot be dubbed as inherently improbable. It is true that in the body of the truck her husband and witness Bhimsing Kathuria were sitting at the time of commission of rape but it must not be forgotten that these two witnesses were tied with ropes and accompanied by Gulabsing Talati of village Taval at whose instance, modesty of Bai Gunta was already outraged near the house of Police Patel of village Devidav. Further, these two witnesses were made made to sit with an armed Police Constable who was carrying a gun. The evidence of these two witnesses read with evidence of Bai Guntaben proves that before these two witnesses were made to board the truck and sit in the body of the truck, they were severely beaten by the policemen and in such circumstances, naturally they would not dare to make any inquiry as to why the truck had stopped at village Devmogra, more particularly when the evidence on record does not suggest that they had any inclination worth the name about rape being committed on the wife of Hana Ramji in the cabin of the truck. The contention that in view of conflicting medical evidence, benefit of doubt should be given to the accused nos. 2,3 and 4 has also no substance. The evidence on record would show that earlier Bai Gunta in the company of her husband had gone to the dispensary of Dr. Saikhede but the said doctor had refused to treat Bai Gunta. The evidence of Dr. Saikhede read as a whole, makes it clear that he is not a witness of truth and had deposed in a cursory manner. Further, he had not maintained necessary records as is required to be maintained while examining a patient. His evidence establishes that a departmental inquiry was instituted against him with reference to this very

incident and he had tendered his resignation before conclusion of the inquiry. Having gone through the evidence of Dr. Saikhede, we are of the opinion that he had come forward only to oblige the accused and his evidence is not trustworthy at all. The material admissions made by him during his cross examination by the learned Spl. PP make it manifest that he had tried to save the accused and failed in his duty as Medical Officer by refusing to examine Bai Gunta at the earliest opportunity. On over all view of the matter, we are satisfied that his evidence being thoroughly unreliable, cannot be treated as conflicting with the evidence of Dr. Daxaben Patel. Thus, no benefit of doubt can be given to the convicted appellants on the ground that the medical evidence on record is of conflicting nature. On over all view of the matter, we are satisfied that learned Judge of the trial Court has assigned good reasons for convicting the policemen of Sagbara Police Station for committing gang rape on Bai Gunta.

46. The record of the case further shows that though no formal complaint was registered at Sagbara Police Station with reference to the incident of kidnapping of Bai Sakra, the policemen had gone to village Devidav and not only beaten Bai Gunta, her husband Hana Ramji and Bhimsing Kathuria, but had tied them with rope and had taken forcibly to Sagbara Police Station in a truck. The policemen had picked up Bai Guntaben from her residence contrary to clear mandate of Section 160 of the Code of Criminal Procedure and inspite of clear enunciation of law by Supreme Court in Smt. Nandini Satpathy Vs. P.L. Dani, AIR 1978 SC 1025. The consistent cogent and reliable evidence of (1) witness Bai Guntaben; (2) witness Hanabhai Ramajibhai and (3) witness Bhimsingh Kathuria proves it beyond shadow of doubt that the policemen from Sagbara Police Station had voluntarily obstructed Bai Gunta, her husband and witness Bhimsing Kathuria so as to prevent them from proceeding in any direction in which they were ready to proceed further. Their reliable evidence further establishes that they were wrongfully restrained in such a manner as to prevent them from proceeding beyond circumscribing limits. Under the circumstances, the conviction of the appellants of the offence punishable under Section 342 read with Section 34 of the IPC recorded by the learned Judge of the trial Court cannot be said to be erroneous at all.

47. The evidence of Bai Gunta PW-1 Ex. 67 would indicate that she was made naked by the policemen as well as subjected to the gang rape by the policemen twice, and therefore, though it was a dark winter night, she had

ample opportunity of seeing the accused from close quarters. Her evidence would indicate that at the place near the house of Police Patel of village Devidav at the instance of policemen the fire was lit because it was a chilly night and therefore, we are of the opinion that in the light of the fire also, she had ample opportunity of identifying the concerned policemen. Similarly, her husband Hana Ramji and witness Bhimsing Kathuria had also ample opportunity of identifying the guilty policemen because they were in the constant company of policemen for more then 12 hours. In the light of this evidence appearing from the evidence of Guntaben and other witnesses, the evidence of identification parade will have to be viewed. The evidence of Bai Gunta shows that on January 19, 1986 at about 11 a.m. she was asked to remain present at the office of Mamlatdar as identification parade was scheduled to take place. In her substantive evidence before the court, she has stated that during the course of identification parade, she had identified four policemen who had committed rape on her. She also identified the accused nos. 1 to 4 before the Court. During her cross examination, she stated that for the purpose of identification of the accused, several persons were made to stand in a row and that on the first occasion, she had identified two persons wrongly because of mistake committed by her. It is relevant to notice that during the first round, no accused was made to stand in the queue and therefore naturally an Adivasi illiterate lady must have been confused and therefore she committed a mistake. She also stated that she was not remembering whether those who were standing in the row had displayed buckle number or not. These are the only questions which were put to Bai Gunta on behalf of the accused so far as identification parade is concerned. The evidence of panchwitness Karamsing M. Vasava PW-8 Ex. 90 shows that on January 19, 1986 he had gone to village Sagbara, where he was requested to act as panchwitness, with regard to the identification parade which was to be held at the office of Mamlatdar. The witness has stated before the Court that the identification parade had taken place in his presence and before holding identification parade, the doors and windows of the office of Mamlatdar were closed. Further according to this witness, 28 policemen were made to stand in a queue and thereafter, Guntaben, who was sitting in another room was called to identify the accused. The witness has stated that on the first occasion, Guntaben had identified two policemen and thereafter she was asked to go to the room from where she had come. According to this witness, in the second round, position of policemen was changed and they were

made to stand in a row. The witness has informed the Court that in the second round Guntaben had identified four policemen and had again gone back to the room from where she had come for the purpose of identification. The witness has further stated before the court that in the third round, seven more policemen and other five persons were made to stand in row with those which were identified by Bai Gunta in the second round and thereafter, Guntaben was called to identify the accused again. The witness has firmly stated before the Court that in the third round also Guntaben had identified those policemen, who were identified by her in the second round. This witness also identified the accused in the court room as those who were identified by Bai Gunta at the identification parade. The witness has informed the court that in the room in which Guntaben was sitting, no police officer was present at all and that panchnama regarding identification parade was prepared in his presence and he had signed the same after it was read over to him. During the cross examination, the witness stated that when he went to the office of Mamlatdar, in all twenty eight policemen were standing in a queue but he had not inquired as to since when those twenty eight policemen were made to stand in the queue. During the cross examination also, the witness firmly stated before the court that in his presence the Mamlatdar had asked Guntaben to identify those who had committed rape on her and that the police personnel who had committed rape on her were identified by her in the second and the third round. In his cross examination, the witness informed that at the time of first round Guntaben was found weak as well as totally feeble, and therefore, she had identified two persons wrongly in the first round. He admitted that he also belongs to Adivasi community. The witness produced panchnama of identification parade at Ex. 91. On appreciation of evidence, we find that the evidence of this witness stands materially corroborated by the contents of by the contemporary record namely panchnama and therefore, there is no reason to doubt his testimony regarding identification of accused by Bai Gunta.

48. The evidence of Madhav Mithabhai Parmar PW-9 Ex. 93 would indicate that on January 19, 1986 he was discharging duties as Dy. Mamlatdar, Sagbara and he had arranged for identification parade on January 19, 1986 at Mamlatdar's office, pursuant to the yadi received by him from CPI Rajpipla. This witness has stated before the Court that complainant Guntaben was made to sit in a separate room situated in the office of Mamlatdar, whereas, policemen were made to sit in another room of

the Mamlatdar's office. This witness has informed the court that in the first round, 25 policemen were asked to stand in a queue and thereafter, Guntaben was called to identify the accused. According to this witness, in the first round, Guntaben had identified two policemen, whose names are mentioned in the panchnama of identification parade. The witness has informed the court that after the first round was over, Guntaben was asked to go to the room from where she had come for identification of the accused. According to this witness, in the second round, 7 other accused were also made to stand alongwith two policemen, who were identified by Bai Gunta in the first round and 25 policemen were also asked to stand in the queue after which, Guntaben who was sitting in another room was called for identification and she had identified four policemen. This witness has stated before the court that thereafter, Gutnaben was asked to go to the room where she had been sitting earlier and third round was arranged, in which in all 31 policemen were made to stand including 6 persons from out side and they were also asked to put on dress of policemen. The witness has informed the court that out of 25 policemen, the identified policemen were asked to wear simple dress and thereafter, Guntaben was called from adjacent room to identify the accused. The witness has very emphatically stated before the court that in the third round, Guntaben had identified those who were identified by her in the second round. In his cross examination the witness stated that he had received yadi from Circle P.I. of Rajpipla police station on January 19, 1986, in which particulars of policemen to be identified were mentioned. According to this witness, after the identification parade was over, a panchnama was prepared which was signed by panch witness also. The witness also stated that Bai Gunta was called in the office of Mamlatdar at about 10.30 a.m. and she was brought by Circle P.I. in his jeep. The witness has further stated that Bai Gunta was accompanied by a lady police constable, whereas 7 policemen whose names were mentioned in the yadi of Circle Police Inspector were brought from Sagbara Police Station in a jeep to the office of the Mamlatdar. The evidence of this witness shows that he had taken all the care before holding identification parade to see to it that Bai Gunta had no opportunity to see the accused earlier before the parade was held. Most of the statements made by witnesses Guntaben, Karamsing Vasava and Dy. Mamlatdar Mr. Parmar relating to the identification of the accused at the parade have gone unchallenged and therefore, it is safe to accept the case of the prosecution regarding identification of the accused as true. Further, having regard to the evidence

of the case, we are of the opinion that there was no unreasonable delay in holding test identification parade. As discussed earlier, Guntaben had all opportunity of identifying the accused earlier when the gang rape was committed on her twice. The contention that accused and the victim were brought together in one jeep and as Guntaben had opportunity to see the accused before the identification parade was held, the evidence led by the prosecution for identification of the accuse should be disbelieved has no factual basis. As observed earlier, Guntaben was brought in police jeep of Circle Police Inspector of Rajpipla and was accompanied by lady Police Constable, whereas 7 policemen were brought from Sagbara Police Station in a different jeep to the office of the Mamlatdar. Similarly, the contention that no care was taken to see that Guntaben had no opportunity to see the accused before parade was held and therefore, the evidence regarding identification parade should be discarded is devoid of merits. As noticed earlier, it was never suggested to Guntaben that she had opportunity to see the accused before identification parade was held. The evidence of panch witness Karamsing Vasava read with evidence of Dy. Mamlatdar Mr. Parmar would show that all necessary care was taken to see that Bai Gunta had no opportunity to see any of the accused before parade was held. Therefore, evidence regarding identification parade being trustworthy deserves to be accepted. On over all view of the matter, we are satisfied that the learned Additional City Sessions Judge did not commit any error in accepting the evidence adduced by the prosecution regarding identification of accused by Bai Gunta.

49. The plea that independent witnesses have not been examined and therefore, the prosecution case should be disbelieved has no substance. According to the learned counsel for the convicted appellants, the prosecution should have examined Gulabsing, who was Talati-cum-Secretary of village Taval and Chhaganbhai, who was also hailing from village Taval. To unfold the prosecution case, the prosecution has mainly relied upon evidence of (1) witness Guntaben who is prosecutrix; (2) her husband Hanabhai; (3) Bhimsingh Kathuria and (4) Dr. Dakshaben Patel. The evidence of Guntaben would indicate that near the house of Police Patel of village Devidav, her modesty was outraged by the policemen at the instance and instigation of Gulabsing. In fact, role played by Gulabsing is that of an accomplice and therefore, his non examination is of little significance. The record shows that Chhaganbhai is a resident of village Taval and he had accompanied Gulabsing and therefore, non examination

of Chhaganbhai as one of the prosecution witnesses has also no significance. In this regard, we find that the learned Judge has given cogent reasons for coming to the conclusion that the prosecution evidence cannot be doubted because certain witnesses were not examined during the course of trial. In catena of decisions the Supreme Court has ruled that it is not proper to reject the case of prosecution for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable, because in the great majority of cases indifferent attitude of the public in the investigation of crime is noticed by the Supreme Court. Again non examination of Narottambhai is also of little consequence because the evidence of Bai Gunta would indicate that he was hand inglove with police officers of Sagbara Police Station. It has come on the record of the case that Narottambhai was Principal of Sagbara High School had played major role in getting false affidavits sworn from Bai Gunta and her husband to show that no rape was committed by any policemen of Sagbara Police Station on Bai Gunta. Further, the evidence of Bai Gunta shows that Narottambhai had advised Guntaben not to disclose incident of gang rape on her from policemen of Sagbara Police Station to any one. Therefore, the prosecution case is not liable to be thrown out for non examination of so called independent witnesses such as Gulabsing or Chhaganbhai or Narottambhai.

50. At this stage, it would be relevant to notice the evidence led by the prosecution regarding preparation of false affidavits by PSI Joshi, principal Narottambhai of Sagbara High School and Jamadar Bhaskar from Guntaben and her husband. In this connection we notice that Bai Gunta in her substantial evidence before the Court has stated that on January 12, 1986 her complaint was registered by the Circle Police Inspector Mr. B.J. Parmar of Rajpipla Police Station. According to her, on the next day i.e. on January 13, 1986 her affidavit Ex. 31 and an affidavit Ex. 32 of her husband were got sworn. These affidavits would show that Bai Gunta had filed a false case against the policemen about the gang rape on her and ill-treatment at the instance of Roopsing Dhana. The evidence of court witness no. 2 Mr. J.V. Puvar shows that these affidavits were handed over to him by Bai Gunta and her husband. It is shocking and surprising as to how these affidavits came to be sworn on the next day of the filing of FIR Ex. 68. The most disturbing feature of the case is that the local police did not inquire about the truthfulness or otherwise of these affidavits. The evidence of Bai Gunta would show that on January 13, 1986 she and her husband were summoned at

Sagbara Police Station from where, they were taken in a jeep and were made to purchase two stamp papers of Rs. 10/- each. The evidence of prosecution witness Vasant Giriya Vasava PW-2 Ex. 71 shows that false affidavits were prepared in the building of the high school at the instance of PSI Joshi and Jamadar Bhaskar. Further, the evidence of Bai Gunta and her husband makes it manifest that the writing on the stamp papers was written in the building of the Sagbara High School, whereas, they were made to sit in the jeep parked outside the building for about an hour and thereafter, their thumb impressions were obtained on the stamp papers without explaining the contents of the writing or without reading over the writing. In this regard, we notice that the evidence of Guntaben gets ample corroboration from the evidence of witness Vasant Vasava. It is relevant to note that Bai Gunta has stated in her deposition before the Court that PSI Joshi had threatened her and asked her not to disclose about the rape committed on her by the policemen to any one and that even Narottambhai, who was principal of the high school, had also come at the police station and advised her not to speak about the rape on her at all. Thus, there is no manner of doubt that a calculated attempt was made to screen offenders and fabricate false evidence. It is relevant to notice that Bai Gunta and her husband belong to Adivasi community and are totally illiterate. At the house of Police Patel of village Devidav, she was stripped naked and made to stand for half an hour near the fire, which was lit at the instance of policemen. The policemen had realized that her husband was not able to protect her honour and had therefore, got emboldened. In the process, they had committed gang rape on her twice. Under the circumstances, the statement made by Bai Gunta before the Court on oath that PSI Joshi had threatened her that on disclosure of the incidents of rape to any one, she would again be handed over to those policemen deserves acceptance. The attempt made by the policemen of Sagbara Police Station to fabricate evidence speaks volumes about their implicity in the crime and is rightly viewed with disfavour by the learned Additional Session Judge.

51. The contention that the local investigation carried out by the Sagbara Police Station had exonerated the accused and therefore, benefit of doubt should be given to the convicted appellants deserves outright rejection. In this connection, we notice that the evidence of Guntaben makes it apparent that after false affidavits were got sworn from her and her husband, she had gone to Free Legal Aid Centre at Rajpipla and one advocate from Delhi as well as another from Ahmedabad,

who was present there had learnt about the false affidavits having been obtained from Guntaben and her husband by policemen of Sagbara Police Station and immediately they had moved the Supreme Court. The Supreme Court in Writ Petition (Criminal) No. 92/86 after realising the seriousness of the case had directed the CBI to take over the investigation and the local police was restrained from making further investigation at all. The record of the case as well as the order passed by the Supreme Court is sufficient enough for coming to the conclusion that local investigation made by Sagbara Police Station was lopsided and was made to screen the policemen of Sagbara Police Station. We may state that the Supreme Court had ordered an inquiry into the incident and accepted the report, which indicated that the incident was true. Further on the basis of directions of the Supreme Court departmental inquiry was instituted against erring officers and State Government was directed to pay compensation to Bai Guntaben. The record of the case would indicate that the local investigation had falsely exonerated the accused and but for the direction given by the Supreme Court the incident would not have seen the day of light. On over all view of the matter, we are satisfied that no benefit of doubt can be given to any of the convicted appellants on the ground that the local investigation had exonerated all the accused.

52. The contention that there is delay in filing FIR by Bai Gunta and therefore, her case ought to have been disbelieved has also no substance. This question has to be viewed from the fact that gang rape was committed twice on Bai Gunta by policemen in worthy in the midnight and in the early morning of January 6, 1986 at the varanda of a building adjacent to the Sagbara Police Station. It is to be appreciated that Bai Gunta and her husband were permitted to go from Rajpipla police station only on January 7, 1986 about 4 p.m.. After her release from the police station, Guntaben had at once narrated to her husband the incidents of rape on her committed by the four policemen of the Sagbara Police Station. Before committing rape, Bai Gunta was stripped naked near the house of Police Patel, Devidav. Further Guntaben and her husband were woken up from sleep and beaten mercilessly. Under the circumstances, there is no doubt that they were terribly horrified by the beastly treatment meted out to them by policemen of Sagbara Police Station. Naturally, there would be initial reluctance on part of the prosecutrix and her husband in filing complaint against the policemen of Sagbara Police Station. In fact, no one

had come to the rescue of Bai Gunta when she was stripped naked near the house of Police Patel of village Devidav and she was not able to resist successfully the policemen who committed gang rape on her twice. The evidence on record further shows that she had sustained bleeding injuries because, after committing rape on her, one policeman had thrust stick in her vagina. As she was bleeding profusely, she was not even able to walk properly. Under the circumstances, her husband had taken her to village Dudhlivel to her brother-in-law's house, from where she alongwith her husband had gone to her brother's house. It was only at village Gundvad that they had met Roopsing Dhana, who had taken them to Rajpipla Hospital for treatment and had given them financial assistance. At the office of Free Legal Aid Bai Gunta had narrated the incident of gang rape on her to father Joseph as well as advocate who was available in the office and the advocate had instructed her and her husband to come on the next day i.e. on January 10, 1986 for the purpose of collecting the complaint. The evidence of the prosecutrix and her husband shows that accordingly, Bai Gunta and her husband had collected complaint from the office of Free Legal Aid on January 10, 1986 and had thereafter, proceeded towards Bharuch to hand it over to DSP and had handed over the same to the officer who was present in the office of DSP on the same day i.e. on January 10, 1986. Under the circumstances, it is wrong to contend that there is delay in lodging FIR by Bai Gunta regarding gang rape on her and other atrocities committed on her and her husband by policemen of Sagbara Police Station. Delay if at all, stands sufficiently explained by the evidence of Bai Gunta and her husband as well as other proved circumstances on the record of the case. The so called delay cannot be treated as fatal to the prosecution case at all. Moreover, the delay would assume importance only if it is established that there was possibility of false implication of the accused. As noticed earlier, it is not even suggested to Bai Gunta that she had any animosity with any of the policemen of Sagbara Police Station. There was no opportunity either to Bai Gunta or to her husband to manipulate the case against any policemen of Sagbara Police Station. As discussed earlier, neither Guntaben nor her husband were bearing any illwill or enmity to the policemen of Sagbara Police Station and they would not have been benefited at all by deliberate delay in filing the FIR. On over all appreciation of the evidence on record, we are of the firm view that there is no delay in lodging the FIR and delay if at all stands sufficiently explained. The result is that no benefit of doubt can be given to the

convicted appellants on the ground that there is delay in lodging FIR.

53. The discussion of the evidence on record made above would show that the conviction of the appellants in Criminal Appeal No. 464/91 is well founded and no case is made out by the learned counsel to interfere with the same in the present appeal. Therefore, appeal filed by the convicted appellants is liable to be rejected. We may incidently mention that the learned Judge has imposed minimum punishment prescribed for the offence punishable under Section 376(2)(a)(g) of the IPC and no special case is made out by the learned counsel for the convicted appellants to reduce the same in the present appeal. Therefore, sentence imposed by the learned Judge also deserves to be upheld.

54. This brings us to the consideration of acquittal appeal filed by the State Government. As observed earlier, during the identification parade, Bai Gunta could identify only original accused nos. 1 to 4 as policemen of Sagbara Police Station who had committed gang rape on her twice. During the identification parade, which was held at the earliest opportunity, Bai Gunta could not identify accused Nos. 5 and 6 as perpetrators of crime. The contention that identification of the acquitted respondents in the Court should be accepted by this court and acquittal order should be reversed cannot be accepted. It is true that in the given set of circumstances, identification in Court can also be relied upon. However, the evidence of identification in Court is of little consequence when there is no corroboration of it by a test identification parade, in which the accused could have been identified. The evidence on record further shows that the original accused no. 1 was also officer in charge of the Sagbara Police Station and evidence on record does not indicate that while despatching policemen to village Devidav in search of missing Bai Sakra, he was not present at the police station. On over all view of the matter, we are satisfied that cogent reasons have been assigned by the learned Additional Sessions Judge for giving benefit of doubt to the respondents in Criminal Appeal No. 721/91 and therefore, acquittal appeal is not liable to be reversed at the instance of State Government. We may say that original accused no. 6 was prosecuted on the footing that he was the armed Police Constable, who had gone to village Devidav alongwith Unarmed Police Constables of Sagbara Police Station and who was sitting

with witness Hana Ramji and others in the body of the truck. As observed by the learned Additional Sessions Judge in the impugned judgement, presence of accused no. 6 at village Devidav is doubtful and benefit of doubt given to him being well founded deserves to be accepted in the acquittal appeal. Thus, even the acquittal appeal is also liable to be dismissed.

55. For the foregoing reasons, both Criminal Appeals i.e. Criminal Appeal No. 464/1991 and Criminal Appeal No. 721/1991 fail and are dismissed. The punishment imposed on the convicted appellants is hereby upheld. Muddamal is ordered to be disposed of in terms of the directions issued by the learned Additional Sessions Judge in the impugned judgement.

At this stage, the learned counsel for the appellants in Criminal Appeal No. 464/91 prays that in view of the time gap between the order of bail passed in favour of the appellants and the disposal of the appeal, time of 8 weeks be given to the convicted appellants to surrender to the authorities. Having regard to the facts of the case, the appellants of Criminal Appeal No. 464/91 are directed to surrender to the authorities on or before 31st October, 2001.

[J.M. Panchal, J.]

[Akshay H. Mehta, J.]

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